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FEB 28 2013



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MEMORANDUM

Real Estate Council Memo No. RE13-062

DATE: FEBRUARY 28, 2013

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
MARK M. EYNATTEN, COMMUNITY SERVICES DIRECTOR *ME*
MICKEY OHLAND, PARK DEVELOPMENT & OPERATIONS MANAGER

FROM: ERICH KUNTZE, REAL ESTATE COORDINATOR *EK*

SUBJECT: RESOLUTION NO. 4653 AUTHORIZING AND APPROVING THE ACQUISITION OF VACANT LAND FOR THE EXPANSION OF CENTENNIAL PARK

RECOMMENDATION: Staff recommends that Council pass and adopt Resolution No. 4653 authorizing and approving the acquisition of vacant land for the expansion of Centennial Park located at the southeast corner of Kibler and Markwood drives for an amount of \$353,432.77 plus up to \$5,000.00 in closing and survey costs.

BACKGROUND DISCUSSION: The City has negotiated the acquisition of an additional 3.01 acres of land with Ashton Woods Homes for the expansion of Centennial Park to 11.01 acres. That acquisition will fulfill the City's goal of providing at least one 10 acre park per square mile of residential development. Approximately 0.57 acres of this land will be reserved by Ashton Woods for a drainage easement to accommodate retention requirements of their adjacent residential development. The agreed purchase price is \$353,432.77 plus survey and closing costs of up to \$5,000.00. As part of the proposed Capital Improvements Program (CIP) this park is scheduled to be developed in FY14-15. In the future, the City will also reimburse the Seller for the City's share of off-site improvements as described in the Purchase Agreement.

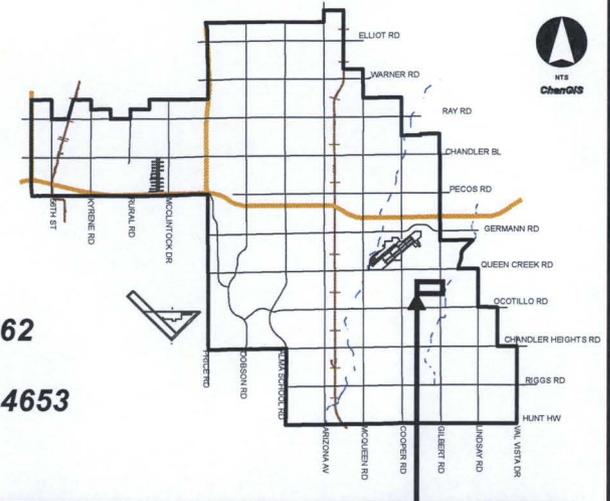
FINANCIAL IMPLICATIONS: Funding for this acquisition has been allocated in the Neighborhood Park Land Acquisition Program of the CIP.

PROPOSED MOTION: Staff recommends that Council pass and adopt Resolution No. 4653 authorizing and approving the acquisition of vacant land for the expansion of Centennial Park located at the southeast corner of Kibler and Markwood drives for an amount of \$353,432.77 plus up to \$5,000.00 in closing and survey costs.

Attachments: Resolution 4653 and Location/Site Map



ACQUISITION TO EXPAND CENTENNIAL PARK TRACT I, BELMONT ESTATES



 ACQUISITION

MEMO NO. RE13-062

RESOLUTION NO. 4653



RESOLUTION NO. 4653

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND APPROVING THE ACQUISITION OF VACANT LAND FOR THE EXPANSION OF CENTENNIAL PARK AT A PRICE OF \$353,432.77 PLUS UP TO \$5,000 IN CLOSING AND SURVEY COSTS.

WHEREAS, the City has negotiated the acquisition of approximately 3.01 acres of land for the expansion of Centennial Park at a cost of \$353,432.77 plus survey and closing costs of up to \$5,000; and

WHEREAS, the City is authorized by law to acquire, whether by purchase or dedication, such real property rights as are needed for public purposes; and

WHEREAS, as part of the negotiations it has been agreed that the Seller shall reserve a portion of the land as a drainage easement for the use of its adjacent residential development;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Maricopa County, Arizona, as follows:

Section 1. It is hereby determined that the acquisition of the real property needed for the expansion of Centennial Park, as more fully described in the attached Exhibit "A", is for a public and necessary purpose, and is in the best interest of the citizens of the City of Chandler.

Section 2. The City is authorized and directed to purchase said real property rights for \$353,432.77 plus survey and closing costs of up to \$5,000. The purchase agreement, and other necessary documents shall be in a form approved by the Chandler City Attorney.

Section 3. The City's Real Estate Coordinator, any City real estate officer acting on the Coordinator's behalf, is authorized to make the written offer for said real property rights and, where accepted, to execute, deliver and deposit into escrow, if required, the approved purchase agreement, along with all other documents and instructions necessary to consummate the purchase of said real property.

PASSED AND ADOPTED by the City Council of the City of Chandler, Maricopa County, Arizona, this ____ day of _____, 2013.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4653 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2013; and that a quorum was present thereat.

CITY CLERK

APPROVE AS TO FORM

CITY ATTORNEY *GAB*

**PURCHASE AGREEMENT
(Unimproved Property)**

SELLER: Ashton Woods Arizona L.L.C., a Nevada limited liability company

BUYER: City of Chandler, an Arizona municipal corporation.

Escrow Agent: Stewart Title & Trust of Phoenix, Inc.; Attention: Sue Leonard

Escrow No.: _____ **Date:** _____

1. Agreement and Escrow. This Purchase Agreement, together with Escrow Agent's printed form Escrow Instructions (collectively, the "Agreement"), constitutes a binding agreement by Seller to sell and Buyer to buy the Property (defined below) upon the terms and conditions stated herein, and shall define the terms of the escrow created with Escrow Agent. Escrow Agent shall also serve as title insurer. If there is any conflict or inconsistency between the printed form Escrow Instructions and this Purchase Agreement, the latter shall prevail. Buyer acknowledges that Seller is not the owner of the Property, but is under contract ("Underlying Contract") to purchase the Property. Buyer's and Seller's obligations under this Agreement are contingent upon Seller's successful acquisition of the Property pursuant to the Underlying Contract, as more particularly provided below.

2. Subject Property. The "Property" to be purchased and sold in accordance with this Agreement is the following:

2.1. Real Property. That certain real property consisting of approximately 3.0068 acres of land, to be verified by the Survey referred to in paragraph 5.5. below, generally located at the Northwest Corner of Gilbert Road and Appleby Road, in Chandler, Maricopa County, Arizona, and more particularly described in attached Exhibit "A" (the "Real Property"), together with all of Seller's rights, privileges, easements and appurtenances thereto, whether recorded or not recorded, including without limitation, all of Seller's right, title and interest in and to any improvements located on the Real Property, development rights, air rights, rights in adjoining streets and alleyways, and water and water rights used in connection with the real property, and all minerals, oil, gas, and other hydrocarbon substances thereon or thereunder (except as otherwise reserved of record); provided, however,

2.2. Reserved Easement. That certain portion of the Real Property consisting of approximately .8729 acres, to be verified by the Survey referred to in paragraph 5.5. below, and more particularly described in attached Exhibit "B" (the "Retention Easement Area"), shall be encumbered by an easement for storm water retention reserved by Seller.

3. Purchase Price. Subject to any adjustment as provided for herein, the “Purchase Price” for the Property shall be the sum of THREE HUNDRED FIFTY THREE THOUSAND FOUR HUNDRED THIRTY TWO AND 77/100 DOLLARS (\$353,432.77), of which \$293,418.56 shall be for the portion of the Real Property that is not part of the Retention Easement Area and \$60,014.20 shall be for the portion of the Real Property that comprises the Retention Easement Area. The Purchase Price shall be payable at Close of Escrow (defined below) by Buyer depositing with Escrow Agent said amount, plus Buyer’s share of the closing costs, in cash, or by cashier’s check, certified check, wire transfer or other immediately available funds (the “Cash Due at Closing”). If the Cash Due at Closing is to be paid by wire transfer, Buyer shall notify Escrow Agent at least two (2) days prior to Closing and Seller shall designate to Escrow Agent the account or accounts to receive the funds. The Property shall be conveyed free and clear at the Close of Escrow upon the payment of the Cash Due at Closing, subject to the reserved easement for storm water retention referred to in paragraph 2.2. The Purchase Price shall be adjusted upward or downward in accordance with the Survey referred to in paragraph 5.5, so that the actual purchase price shall be \$137,500.00 per acre for the Real Property that is not part of the Retention Easement Area and \$68,750.00 per acre for the portion of the Real Property that comprises the Retention Easement Area.

4. Escrow. The sale contemplated by this Agreement shall be consummated through Escrow as follows:

4.1. Opening and Closing Dates. Escrow shall open on the business day on which Escrow Agent receives one (1) fully executed copy of this Agreement. Upon receipt, Escrow Agent shall give written notice to the persons listed in paragraph 15 below of the date that escrow has opened and such notice shall constitute evidence of Escrow Agent’s acceptance of the Agreement. Subject to paragraph 5 below, “Close of Escrow” or “Closing” or “Closing Date” shall occur on the sixtieth (60th) day following the date that Buyer obtains final approval from the City Council of the City of Chandler of a final plat for the Belmont Estates residential subdivision, the same being the subdivision in which the Property is situated, or upon such other date as Buyer and Seller hereafter agree upon in writing. If Closing otherwise falls on a Saturday, Sunday or legal holiday, Closing shall occur upon the next following business day.

4.2. Seller’s Contingency. Seller’s obligations under this Agreement, including, without limitation, to sell the Property to Buyer, are contingent upon the closing of Seller’s acquisition of the Property from the seller under the Underlying Contract (“Underlying Seller”) pursuant to the Underlying Contract (the “Underlying Closing”). If the Underlying Closing has not occurred as of, or will not occur on, the Closing Date, then the Closing under this Agreement shall be extended to a date on or after the date of the Underlying Closing, as specified by Seller upon at least ten (10) business days’ prior notice. This Agreement shall automatically terminate upon the termination, rescission, or cancellation of the Underlying Contract prior to the Underlying Closing for any reason. The requirement for the Underlying Closing constitutes a condition to the Closing, and the failure or inability of Seller to consummate the Underlying Closing shall be a failure of a condition only, and shall not be considered a default of Seller hereunder.

4.2. Closing Place. The Closing shall take place in the offices of Escrow Agent at Stewart Title & Trust of Phoenix, Inc., 2930 E. Camelback, Suite 210, Phoenix, Arizona 85016; Attn: Sue Leonard; Telephone: 602-462-8131; FAX: 602-776-6620

4.3. Documents to be Delivered for the Closing. As a condition precedent to Buyer's obligation to close under this Agreement, Seller shall deposit or have deposited into Escrow the following documents, instruments and other items at least one (1) business day prior to the Close of Escrow (or sooner, if required elsewhere in this Agreement):

(a) A Special Warranty Deed (with Reserved Easement), in the form and substance of the attached Exhibit "C", conveying the Property to Buyer subject to all matters of record that have been approved in writing by Buyer or deemed approved by Buyer pursuant to the terms of this Agreement, but reserving unto Seller an easement for storm water retention over that portion of the Property that comprises the Retention Easement Area;

(b) A Non-Foreign Certificate in substantially the form and substance of the attached Exhibit "D";

(c) Release documents in form and substance satisfactory to Buyer, executed by all appropriate parties, releasing any deed of trust, mortgage or other lien interest or encumbrance recorded against the Real Property to which Buyer has registered an objection pursuant to paragraph 5.1 below;

(d) An affidavit or estoppel certificate from Seller in form acceptable to Buyer indicating that there are no leases affecting the Property, or otherwise itemizing all leases, identifying each lessee, date of lease, terms and any options to renew, and stating that none of the leases referred to therein contain options to purchase;

(e) All other documents or instruments necessary to satisfy requirements for the title insurance to be provided to Buyer in connection with this purchase transaction; and

(f) A "closing" or "pre-audit settlement" statement prepared by Escrow Agent, in form and substance satisfactory to Buyer.

All of such documents and instruments shall be duly executed and, where appropriate, acknowledged.

4.4. Closing Items. At Close of Escrow, the transaction provided for herein shall be consummated by Escrow Agent (a) delivering to Buyer or recording, as appropriate, the documents and instruments referred to in paragraph 4.3 above and (b) disbursing funds to Seller in accordance with the terms of this Agreement.

4.5. Title Policy. At Close of Escrow, Escrow Agent shall issue or cause to be issued in favor of Buyer an **ALTA extended coverage** owner's policy of title insurance insuring title to the Property in an amount equal to the Purchase Price, subject only to (a) the usual exceptions, conditions and stipulations contained in the printed form of such an extended coverage policy, and (b) those title defects or exceptions which are listed in the Title Report (defined below), and which are deemed waived or approved by Buyer in accordance with paragraph 5.1 below (the "Title Policy").

5. Buyer's Contingencies. Buyer's obligation to close under this Agreement is subject to satisfaction of the following conditions precedent (any or all of which may be waived by Buyer, in its sole discretion, but only in writing signed by Buyer's duly authorized agent):

5.1. Status of Title. As soon as reasonably possible after the Opening of Escrow, Escrow Agent shall provide Buyer and Seller with a preliminary report of the title to the Property, disclosing all matters of record which relate to the title to the Property, and Escrow Agent's requirements for both closing the Escrow created by this Agreement and issuing the Title Policy. At such time as Buyer receives the preliminary title report (and any amended report adding additional title exceptions) (the "Title Report"), **Escrow Agent shall also cause legible copies of all instruments referred to in the Title Report to be furnished to Buyer.** Buyer shall have ten (10) days after receipt of the Title Report and the furnishing of all instruments described in the Title Report to make objection in writing to Seller and Escrow Agent as to any matter shown thereon. If Buyer fails to object within this period, the condition of title to the Property shall be deemed approved. If Buyer does object to any matter disclosed in the Title Report, Seller may elect (but shall not be obligated) to remove such objection before Close of Escrow. If Seller does not elect to remove such objections, or if any such matter cannot be removed after Seller's attempts to do so, Seller shall so notify Buyer and Escrow Agent, in writing, within ten (10) days after receipt of a written objection from Buyer, and Buyer shall elect in writing to Seller and Escrow Agent within ten (10) days after receipt of Seller's notice either: (i) to cancel the Escrow and this Agreement without any penalty, charge or cost to Buyer; or (ii) to close Escrow, waiving and taking title subject to such matters. Failure to give notice to Seller of Buyer's election shall constitute an election to waive the objection.

5.2. Additional Encumbrances. Except for matters which are to be released at or as part of the Close of Escrow, Seller shall not place or cause to be placed any liens or encumbrances on the title to the Property from the date of this Agreement through Close of Escrow or thereafter without the prior written consent of the Buyer. If Seller places or causes a lien or encumbrance on the Property, contrary to the provisions of this Agreement, which can be removed by the payment of money, Escrow Agent is hereby expressly authorized, directed, and instructed to pay such moneys otherwise payable to Seller at Close of Escrow, and the net proceeds otherwise available to Seller at Close of Escrow shall be reduced accordingly. To the extent that moneys available to Seller at Close of Escrow are insufficient to cause any such lien or encumbrance to be removed, Seller shall, on or before the date set for Close of Escrow, cause additional money to be deposited with Escrow Agent to enable Escrow Agent to remove the lien or encumbrance.

5.3. Investigation; Review Period. Buyer shall have until the Closing Date (the "Review Period"), in which to examine the Property. During such time, Buyer may review, investigate, survey and examine the Property at any time with any persons who it shall designate, including engineers and soil testing personnel. Subject to the terms of the Underlying Contract, Seller shall permit access to the Property by Buyer and the persons so designated by it, and shall afford them the opportunity to investigate, inspect and perform any tests upon the Property that Buyer deems necessary or appropriate to determine whether the Property is suitable for Buyer's purposes, provided that Buyer shall not unreasonably interfere with Seller's or Underlying Seller's use of the Property. In the event Buyer, after conducting such inspections, investigations, and tests, in its sole discretion, determines that the Property is not suitable for its purposes, it may elect at any time prior to the end of the Review Period to cancel this Agreement by written notice to Seller and Escrow Agent, who shall, without further instruction from either party or any other person, promptly return any documents deposited hereunder to the appropriate party, and this Agreement shall thereafter have no further force or effect. If Buyer does not elect to cancel under this paragraph within the Review Period, then Close of Escrow shall occur on the closing date specified in this Agreement, provided that all contingencies, including status of title requirements, are met. Buyer shall cause its third party consultants entering the Property to have in effect commercial general liability insurance naming Seller as additional insured, with limits of not less than \$1,000,000.00 and a deductible of not more than \$25,000.00 for personal injury (including bodily injury and death) and property damage. Prior to entering onto the Property, Buyer shall provide Seller certificates of insurance evidencing such coverage. In the event that any of Buyer's agents or employees are injured on the Property, as between Buyer and Seller and Underlying Seller, Buyer shall be solely responsible for such claim and shall defend Seller and Underlying Seller against such claims.

5.4. Leases. No later than fifteen (15) days after opening of escrow, Seller shall provide Buyer with a legible copy of any lease affecting the Property. Buyer shall have until the end of the Review Period to cancel this Agreement due to objection to the terms of any such lease where the Property is being purchased by Buyer subject to such lease.

5.5. Survey. In connection with issuance of the Title Policy, Buyer, at its own expense shall provide to Escrow Agent and Seller, certified to each, a copy of an ALTA "as built" survey which complies with the most current minimum standard detail requirements of A.L.T.A./A.C.S.M. for a Class A survey, and showing all items listed as exceptions to the Title Report (the "Survey"). The Survey shall contain a separate legal description and depiction of the portion of the Real Property that is not part of the Retention Easement Area and the portion of the Real Property that does comprise the Retention Easement Area and set forth the acreage of each such portion of the Real Property, which shall be used to calculate the Purchase Price. Seller shall have the right to review and approve the Survey, which approval shall not be unreasonably withheld. The legal descriptions described on the Survey shall be used for the Special Warranty Deed, including the designation of the portion of the Real Property reserved by Seller for the storm water retention easement.

5.6. Recordation of Final Plat. Recordation of the final plat for the Belmont Estates residential subdivision (the "Subdivision"), wherein the Property, including both the portion of the Real Property that is not part of the Retention Easement Area and the portion of the Real Property that does comprise the Retention Easement Area are located, shall occur prior to or concurrent with the closing of this Escrow.

6. Construction of Offsite Improvements and Reimbursement. Seller is required to complete or cause to be completed as a condition of developing the Subdivision, at Seller's sole cost and expense, certain offsite improvements described on Exhibit "E" attached hereto and the line-item budget attached hereto as Exhibit "F" ("Offsite Improvements"). Buyer shall reimburse Seller for a percentage share of the actual costs of construction of the Offsite Improvements in an amount not to exceed (\$195,453.50) (the "Reimbursement Amount"). Buyer's percentage share of the costs of each component of the Offsite Improvements is set forth on Exhibit "E". Buyer shall deposit with Escrow Agent the Reimbursement Amount, in addition to the Purchase Price for the Property, at the Close of Escrow. For purposes of this Agreement, construction of the Offsite Improvements shall be deemed completed when (a) the Offsite Improvements have been formally accepted by the City of Chandler in accordance with the same procedures followed for acceptance of offsite improvements generally as evidenced by the issuance of a Letter of Final Acceptance, and (b) the City's standard one-year warranty period has commenced.

6.1 In order to ensure completion of the Offsite Improvements and to secure Buyer's obligation to reimburse Seller for its share of the costs of the Offsite Improvements, Escrow Agent is hereby instructed to withhold at Closing the Reimbursement Amount and to deposit the Reimbursement Amount in a separate, interest-bearing account (the "Escrow Holdback Account"), which shall be maintained by Escrow Agent for the benefit of Seller and Buyer. Interest on the funds in the Escrow Holdback Account shall be paid to Buyer and calculated from the time the funds are deposited into the Escrow Holdback Account until the Escrow Holdback Account is closed. Buyer and Seller shall divide equally the cost of the Escrow Holdback Account. Within twenty-one (21) days from the date on which Buyer has received from Seller (a) all invoices for the actual costs incurred by Seller in completing construction of the Offsite Improvements, (b) certification from a licensed engineer as to the actual quantities of materials used in construction of the Offsite Improvements, and (c) the Letter of Final Acceptance indicating formal acceptance of the Offsite Improvements executed by an authorized representative of the City of Chandler, Buyer shall promptly review the received material and as long as the amount requested for reimbursement ("Reimbursement Request") does not exceed the Reimbursement Amount for construction of the Offsite Improvements, as provided for in subparagraphs (a), (b) & (c) above, Buyer and Seller shall notify Escrow Agent in writing that the Reimbursement Request is approved for disbursement from the Escrow Holdback Account. Upon receipt of said notice, Escrow Agent shall disburse the Reimbursement Request to Seller. The balance of the funds in the Escrow Holdback Account, if any, shall be disbursed to Buyer. Buyer's receipt of the materials from Seller described above shall not be deemed received until such time as they are physically received at the office of the City of Chandler Real Estate Department, whose location is in Chandler, Arizona.

6.2 Except in the event of an Uncontrollable Event (as defined below), if Seller fails to complete the Offsite Improvements within twenty four (24) months from Closing, then Buyer may as its sole remedy take over construction of the Offsite Improvements upon thirty (30) days prior written notice to Seller (and provided that Seller does not resume construction of the Improvements within such thirty (30) day period). If Buyer elects to assume and take over the construction of the Offsite Improvements, then (a) Seller shall reasonably cooperate with Buyer in connection with completion of the construction of the Offsite Improvements, (b) Buyer shall be entitled to draw upon the Reimbursement Amount pursuant to customary draw request procedures to pay the actual out-of-pocket costs incurred by Buyer to construct the Offsite Improvements, and (c) if the costs incurred by Buyer to construct the Offsite Improvements exceed the Reimbursement Amount, then, after the full amount of the Reimbursement Amount has been disbursed to Buyer, Seller shall pay Buyer directly for such excess costs within ten (10) days following receipt of an invoice for payment, and (d) upon completion of the Offsite Improvements, if the costs incurred by Buyer to construct and complete the Offsite Improvements is less than the Reimbursement Amount, then the balance of the Reimbursement Amount shall be disbursed as follows (1) first to Seller, to reimburse Seller for any out-of-pocket costs previously incurred by Seller in connection with the construction of the Offsite Improvements, and (2) the balance; if any, to Buyer. The completion date shall be extended by a period of time equal to any period that progress in construction of the Offsite Improvements is delayed due to strikes, lockouts, fire or other casualties, material or labor shortages, governmental regulations or controls, delay by any governmental entities that are beyond the reasonable control of Seller, acts of God or other similar causes beyond the reasonable control of Seller (“Uncontrollable Events”).

6.3. Buyer covenants and agrees to provide an encroachment permit or other written authorization required by Seller, its contractors, subcontractors, employees, agents and representatives to enter upon the Property for the purpose of constructing the Offsite Improvements, provided that Seller, its contractors, subcontractors, employees, agents and representatives, meet the City Code requirements for issuance of such a permit or authorization for entry upon public property. The permission or authorization granted in accordance with this paragraph shall terminate upon final acceptance by Buyer of all of the Offsite Improvements. Seller shall at all times comply in all material respects with all applicable laws, rules, regulations and requirements in connection with the exercise of its rights hereunder.

7. “As-is” Condition. Buyer acknowledges and agrees that it is purchasing the Property from Seller “as-is” and upon the basis of Buyer’s own investigation and examination of the Property and the status of title to the Property, and not upon the basis of any representations, covenants or warranties made by Seller except those representations, covenants and warranties expressly made by Seller in paragraph 8 below or elsewhere in this Agreement. All implied warranties, including, without limitation, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE are hereby expressly disclaimed.

8. Seller’s Representations and Warranties. Seller does represent, covenant and warrant to Buyer as follows:

8.1. To the best of Seller's knowledge, there is no existing default under any encumbrance on the Property (or of any event which, with the passage of time, giving of notice or both, would constitute such a default).

8.2. Except as may be reflected in the Title Report, to the best of Seller's knowledge, there are no claims, actions, suits, or other proceedings pending or threatened by any governmental department or agency or any corporation, partnership, entity, or person whomsoever, nor any voluntary actions or proceedings contemplated by Seller, which in any manner or to any extent may detrimentally affect Buyer's right, title, or interest in and to the Property or the value of the Property or Seller's ability to perform Seller's obligations under this Agreement.

8.3. To the best of Seller's knowledge, no work has been performed or is in progress at the Property and no materials have been furnished to the Property which might give rise to mechanic's, materialman's, or other liens against any part of the Property.

8.4. Seller has full power, authority and legal capacity to execute, deliver, and perform this Agreement and all related documents or instruments. Except as otherwise expressly provided herein, no consent, approval or authorization of any other person or entity is required in connection with Seller's execution or performance of this Agreement.

8.5. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will constitute a default or an event which, with notice or the passage of time or both, would constitute a default under, or violation or breach of, any agreement to which Seller is a party or by which Seller may be bound.

The foregoing representations, warranties and covenants shall be true as of the date hereof and as of Close of Escrow and shall survive the Close of Escrow and delivery of the Deed for a period of one (1) year and then terminate, except that any claim for which legal action is filed and served within such time period shall survive until resolution of such action. All references in this Section to the best of Seller's knowledge shall mean the actual (and not imputed or constructive) knowledge of Jeremy Ramsdell, without having made, or being under any duty to make any further investigation or inquiry with respect to such knowledge. In no event shall Jeremy Ramsdell have any personal liability or obligation hereunder and Buyer agrees not to attempt to assert any liability against Jeremy Ramsdell personally by reason of any of the foregoing representations or warranties proving to be incorrect. If Buyer or Seller learns prior to Closing any fact that would render any of the foregoing warranties or representations untrue as a result of knowledge first gained by Seller (or the occurrence of events first arising) after the date of this Agreement and not caused by the intentional misconduct of Seller, (i) such party shall immediately give notice thereof to the other party, and (ii) Seller's warranty or representation shall be deemed amended thereby.

9. Buyer's Representations and Warranties. Buyer does represent, warrant and covenant to Seller as follows:

8.1. Buyer has full power, authority and legal capacity to execute, deliver, and perform this Agreement and all related documents or instruments subject to paragraph 18 herein. Except as otherwise expressly provided herein, no consent, approval or authorization of any other person or entity is required in connection with Buyer's execution or performance of this Agreement.

8.2. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will constitute a default or an event which, with notice or the passage of time or both, would constitute a default under, or violation or breach of, any agreement to which Buyer is a party or by which Buyer may be bound.

10. Costs and Prorations; Distribution of Net Proceeds.

10.1. Buyer shall pay all closing costs; Seller shall pay standard coverage title insurance fees. Any other costs or expenses shall be paid by the party to whom they are specifically allocated hereunder.

10.2. All real property taxes, rents and assessments shall be prorated through Escrow as of the Close of Escrow, based upon the most current available information.

10.3. Upon Close of Escrow and payment of all costs, expenses, fees, taxes, rents, assessments, real estate commissions and other applicable charges, the net proceeds to Seller shall be distributed to Seller.

11. Non-Foreign Status. If Seller fails to deliver the Non-Foreign Certificate described herein, or in the event Buyer has a reasonable basis for believing that the information contained in any such Non-Foreign Certificate delivered by Seller is false or inaccurate, Buyer shall be entitled to withhold, or to direct Escrow Agent to withhold upon the Close of Escrow, from the sums to be delivered to Seller under paragraph 3 above, an amount equal to ten percent (10%) of the Purchase Price, which sum may be paid to the Internal Revenue Service or United States Treasury if Buyer, in Buyer's sole discretion, deems it necessary to make such a delivery of such funds. Notwithstanding the foregoing, any sums withheld upon the Close of Escrow under this Section shall be considered, for all purposes, as having been paid and applied against the Purchase Price hereunder.

12. Risk of Loss. Until the Close of Escrow, Seller shall bear all risk of loss with regard to the Property.

13. Condemnation. If condemnation or eminent domain proceedings or an agreement with a governmental agency in lieu of such proceedings should affect all or part of the Property prior to the Close of Escrow, Buyer may, at its option, either (a) terminate this Escrow and Agreement by written notice to Seller, in which event neither Buyer nor Seller shall have any

further liability hereunder, or (b) elect to consummate this transaction, in which event Seller shall assign to Buyer all of its right, title and interest in and to any award made or to be made in connection with such condemnation or eminent domain proceedings and shall permit Buyer to conduct all negotiations and enter into all agreements with respect thereto. Buyer's rights hereunder shall be cumulative, and Buyer shall have the foregoing rights in the case of each such condemnation or eminent domain proceeding.

14. Remedies.

14.1. In the event of default by Buyer, Seller may, as its sole remedy, cancel this Agreement fifteen (15) days after Seller gives written notice to Buyer and Escrow Agent that Buyer is in default, if within such period such default has not been cured by Buyer.

14.2. In the event of default by Seller, Buyer may, as its sole remedy, cancel this Agreement fifteen (15) days after Buyer gives written notice to Seller and Escrow Agent that Seller is in default, if within such period such default has not been cured by Seller.

15. Notices. All notices, consents, approvals and waivers required or permitted hereunder shall be given in writing and shall be effective upon personal delivery or direct facsimile transmission, or two (2) business days after being deposited in the U.S. Mail, registered or certified, return receipt requested, postage prepaid, or one (1) business day after being deposited with any commercial air courier or express service. All such notices shall be addressed as follows or to such other address or addresses as the parties or Escrow Agent may from time to time specify in writing delivered as provided in this paragraph:

If to Escrow Agent: Stewart Title & Trust of Phoenix, Inc.
2930 E. Camelback, Suite 210
Phoenix, Arizona 85016
Attn: Sue Leonard
Telephone: 602-462-8131
FAX: 602-776-6620
Email: sleonard@stewartaz.com

If to Seller: Ashton Woods Arizona L.L.C.
Attn: Mr. Scott Moore
6991 East Camelback Road, Suite A-300
Scottsdale, Arizona 85251
Telephone: 480-515-9955
FAX: 480-905-3141
Email: smoore@ashtonwoodshomes.com

With a copy to: Ashton Woods Homes
Attn: Deborah M. Danzig, Esq.
1405 Old Alabama Road, Suite 200

Roswell, Georgia 30076
Telephone: 678-597-2122
FAX: 770-998-7494
Email: ddanzig@ashtonwoodshomes.com

and,

Brier, Irish, Hubbard & Erhart, PLC
2400 East Arizona Biltmore Circle, Suite 1300
Phoenix, Arizona 85016
Attn: Jeffrey Hubbard, Esq.
Telephone: 602-515-0160
FAX: 602-522-3945
Email: jhubbard@bihlaw.com

If to Buyer:

City of Chandler
Real Estate Department
P.O. Box 4008, Mail Stop 400
Chandler, Arizona 85244-4008
Attn.: Erich Kuntze
Phone: (480) 782-3397
Fax No.: (480) 782-3365

16. Further Assurances. Promptly upon the request of the other or upon the request of Escrow Agent, each party shall do such further acts and shall execute, have acknowledged and deliver to the other party or to Escrow Agent, as appropriate, any and all further documents or instruments reasonably requested in order to carry out the intent and purpose of this Agreement.

17. Other Important Provisions.

17.1. Modification and Waiver. Except as expressly provided herein to the contrary, no supplement, modification or amendment of any term of this Agreement shall be deemed binding or effective unless in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement shall constitute or be deemed a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as otherwise expressly provided herein, no waiver shall be binding unless executed in writing by the party making the waiver.

17.2. Exhibits. The Exhibits referred to herein and attached hereto (the "Exhibits") are incorporated herein by reference.

17.3. Litigation Expenses and Attorneys' Fees. In the event of litigation involving this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs and expenses incurred in such action from the other party, including without limitation the cost of reasonable attorneys' fees as determined by the judge of the court.

17.4. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be deemed invalid or prohibited thereunder, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

17.5. Entire Agreement. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement among the parties. All terms and conditions contained in any other writings previously executed by the parties and all prior and contemporaneous arrangements and understandings between the parties are superseded hereby. No agreements, statements or promises about the subject matter hereof shall be binding or valid unless they are contained herein.

17.6. Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the parties to this Agreement and their respective heirs, executors, administrators, personal representatives, successors and assigns.

17.7. Counterparts. This Agreement may be executed by the signing in counterparts. The execution of this instrument by each of the parties signing a counterpart hereof shall constitute a valid execution, and this instrument and all of its counterparts so executed shall be deemed for all purposes to be a single instrument.

17.8. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Arizona.

17.9. Headings and Construction. The descriptive headings of the paragraphs of this Agreement are inserted only for convenience and shall not define, limit, extend, control or affect the meaning or construction of any provision herein. Where the context requires herein, the singular shall be construed as the plural and neuter pronouns shall be construed as masculine and feminine pronouns, and vice versa. This Agreement shall be construed according to its fair meaning and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.

17.10. Survival. Except as expressly set forth herein, all representations, warranties and covenants set forth herein shall survive the Close of the Escrow.

17.11. Time of Essence. Time is of the essence of this Agreement, and Buyer and Seller hereby agree to perform each and every obligation hereunder in a prompt and timely manner.

17.12. Possession. Upon the Close of Escrow, possession of the Property will be transferred to Buyer.

18. Council Approval. This Agreement and opening of escrow is subject to the prior approval and authorization by the City Council of the City of Chandler.

SELLER: ASHTON WOODS ARIZONA L.L.C., a Nevada limited liability company

By: *Jme*
Its: Div. Pres

BUYER: CITY OF CHANDLER, an Arizona municipal corporation

By: _____
Its: _____

APPROVED AS TO FORM:

Chandler City Attorney

Accepted this _____ day of _____, 2013

ESCROW AGENT:

Stewart Title & Trust of Phoenix, Inc.

By: _____
Its: _____

18. Council Approval. This Agreement and opening of escrow is subject to the prior approval and authorization by the City Council of the City of Chandler.

SELLER: ASHTON WOODS ARIZONA L.L.C., a Nevada limited liability company

By: _____
Its: _____

BUYER: CITY OF CHANDLER, an Arizona municipal corporation

By: _____
Its: _____

APPROVED AS TO FORM:

Chandler City Attorney *G.A.B.*

Accepted this _____ day of _____, 2013

ESCROW AGENT:

Stewart Title & Trust of Phoenix, Inc.

By: _____
Its: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE ENTIRE REAL PROPERTY

Tract "J" of Belmont Estates according to the final plat thereof recorded in Book _____, Page _____
of official records, Maricopa County, Arizona.

EXHIBIT "B"

LEGAL DESCRIPTION OF PORTION OF REAL PROPERTY THAT COMPRISES THE
PARK EASEMENT AREA

The South 195 feet of the East 195 feet of Tract "J" of Belmont Estates according to the final plat thereof recorded in Book ____, Page ____ of official records, Maricopa County, Arizona.

EXHIBIT "C"

When recorded, mail to:
City of Chandler
City Clerk's Office
P.O. Box 4008, Mail Stop 606
Chandler, Arizona 85244-4008

APN:
Section ____, Township 2 South, Range 5 East

This document is exempt from Affidavit and Fee requirements pursuant to A.R.S. Sec. 11-1134.A.3.

SPECIAL WARRANTY DEED (with EASEMENT RESERVED)

For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged,

ASHTON WOODS ARIZONA L.L.C., a Nevada limited liability company

("Grantor"), does hereby grant and convey unto the CITY OF CHANDLER, an Arizona municipal corporation ("Grantee"), that certain real property situated in Maricopa County, Arizona, and more particularly described in Exhibit A, attached hereto and made a part hereof (the "Property"), together with all of Seller's rights, privileges, easements and appurtenances thereto, whether recorded or not recorded, including without limitation, all of Seller's right, title and interest in and to any improvements located on the Real Property, development rights, air rights, rights in adjoining streets and alleyways, and water and water rights used in connection with the real property, and all minerals, oil, gas, and other hydrocarbon substances thereon or thereunder (except as otherwise reserved of record).

TO HAVE AND TO HOLD the Property, together with all improvements thereon and all rights, privileges, easements, tenements, hereditaments and appurtenances pertaining thereto, forever, free and clear of all liens, claims and encumbrances, SUBJECT ONLY TO taxes and assessments not yet due and all easements as they appear of record.

RESERVING, however, unto Grantor, an easement ("Reserved Easement") for the construction, maintenance, repair and operation of a storm water drainage and retention basin in and upon that portion of the Property more particularly described in Exhibit B ("Easement Area"), attached hereto and incorporated herein by reference. The Reserved Easement (a) shall run with the land, be binding upon Grantee, its successors and assigns, and inure to the benefit of Grantor, its successors and assigns, and (b) shall be deemed an easement appurtenant benefitting

the common areas and rights-of-way located within the residential subdivision shown on that certain plat for _____ recorded at MCR _____ (“Project”).

Upon completion of the grading and installation of the storm water drainage and retention improvements within the Easement Area, the Grantee shall be responsible for the maintenance of such improvements. For purposes of this Agreement, the storm water drainage and retention improvements shall be deemed completed when (i) such improvements have been formally accepted by the Grantee in accordance with the same procedures followed for acceptance of offsite improvements generally as evidenced by the issuance of a Letter of Final Acceptance, and (ii) the Grantee’s standard one-year warranty period has commenced.

Grantor intends to convey the common areas within the Project to the Belmont Estates Community Association, a non-profit corporation (the “Association”). Upon such conveyance, the Association shall automatically be deemed to have assumed the rights and obligations of Grantor with respect to the Reserved Easement and Grantor shall be released and relieved of any further rights or obligations with respect to the Reserved Easement.

Grantor hereby binds itself and its successors and assigns to warrant and forever defend the title to the Property against its acts and none other, subject to the matters set forth above.

BY its acceptance of this Special Warranty Deed, Grantee hereby consents to and agrees to the terms and conditions of the Reserved Easement.

DATED this _____ day of _____, 2012.

GRANTOR: ASHTON WOODS ARIZONA
L.L.C., a Nevada limited liability company

By : _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this, the ____ day of _____, 2012, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be, the _____, an _____ and that he/she, as such officer being authorized so to do, executed the foregoing Special Warranty Deed for the purposes therein.

EXHIBIT "D"

NON-FOREIGN CERTIFICATE

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. To inform the transferee (buyer) that withholding tax is not required upon the disposition of a U.S. real property interest held by _____, the undersigned hereby certifies the following to the City of Chandler, an Arizona municipal corporation:

1. I am not a nonresident alien for purpose of U.S. income taxation;
2. My U.S. taxpayer identifying number (Social Security number) is _____; and
3. My home address is _____.

I understand that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement I have made here could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief, it is true, correct, and complete.

Date: _____

Subscribed and sworn to this ____ day of _____, 2012 by _____.

Notary Public

My Commission Expires:

EXHIBIT "E"
OFFSITE IMPROVEMENTS SUBJECT TO REIMBURSEMENT

- 50% of the costs of the half-street improvements to Nash Way
- 50% of the costs of undergrounding/removal of RWCD ditch
- 100% of the costs of the design and installation of 8" reclaimed water line serving the Property

EXHIBIT "F"
ESTIMATED BUDGET OF COSTS OF OFFSITE IMPROVEMENTS



Belmont Estates
 SWC Gilbert Road & Sunrise Dr.
 Chandler, AZ

Offsite Improvements Subject to Reimbursement - Centennial Park Frontage
 Prepared: 1/11/13

ITEM	QUANTITY	UNIT PRICE	COST	City %	Total Cost
Half Street Improvements to Nash Way					
3" AC on 6" ABC - Half-street	545	\$ 14.00 SY	\$ 7,630.00	100%	\$ 7,630.00
C&G MAG 220-"A"	460	\$ 8.00 LF	\$ 3,680.00	100%	\$ 3,680.00
Conc. S/W MAG 230	1,840	\$ 2.00 SF	\$ 3,680.00	100%	\$ 3,680.00
Sidewalk Ramp	2	\$ 1,500.00 SF	\$ 3,000.00	100%	\$ 3,000.00
Scupper	1	\$ 2,500.00 EA	\$ 2,500.00	100%	\$ 2,500.00
Survey Mon. MAG 120-2	1	\$ 275.00 EA	\$ 275.00	100%	\$ 275.00
Street Signs & Stop Signs	1	\$ 150.00 EA	\$ 150.00	100%	\$ 150.00
Remove temporary turnaround	1	\$ 7,300.00 LS	\$ 7,300.00	100%	\$ 7,300.00
12" Waterline	160	\$ 35.00 LF	\$ 5,600.00	50%	\$ 2,800.00
8" Waterline	145	\$ 25.00 LF	\$ 3,625.00	50%	\$ 1,812.50
Streetlight Trench and Conduit	340	\$ 3.50 LF	\$ 1,190.00	50%	\$ 595.00
Electrical Trench and Conduit	340	\$ 8.50 LF	\$ 2,890.00	50%	\$ 1,445.00
Street lights	2	\$ 1,300.00 EA	\$ 2,600.00	50%	\$ 1,300.00
		SUBTOTAL	\$ 44,120.00		\$ 36,167.50
RWCD Irrigation Piping					
24" RGRCP	450	\$ 65.00 LF	\$ 29,250.00	50%	\$ 14,625.00
Irrigation Manholes	3	\$ 7,000.00 SY	\$ 21,000.00	50%	\$ 10,500.00
Remove Existing Ditch	450	\$ 15.00 LF	\$ 6,750.00	50%	\$ 3,375.00
RWCD Easement - Decomposed Granite	8,000	\$ 0.95 SF	\$ 7,600.00	50%	\$ 3,800.00
		SUBTOTAL	\$ 64,600.00		\$ 32,300.00
8" Reclaimed Waterline from Gilbert Rd					
8' PVC - Purple Pipe - DIP	2,277	\$ 27.50 LF	\$ 62,617.50	100%	\$ 62,617.50
8" Valves - Complete	4	\$ 950.00 EA	\$ 3,800.00	100%	\$ 3,800.00
		SUBTOTAL	\$ 66,417.50		\$ 66,417.50
Site Grading	1	\$ 4,800.00 LS	\$ 4,800.00	100%	\$ 4,800.00
Design / Permit Fees / Testing / CM	1	\$ 38,000.00 LS	\$ 38,000.00	100%	\$ 38,000.00
Subtotal			\$ 217,937.50		\$ 177,685.00
Contingency	10%	\$ 177,685.00	\$ 17,768.50	100%	\$ 17,768.50
Total Cost Subject to Reimbursement					\$ 195,453.50